

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THE STATE OF NEVADA,
DEPARTMENT OF EMPLOYMENT
TRAINING AND REHABILITATION, ex.
Rel. Chagolla,

Case No. 3:23-cv-00442-ART-CLB
ORDER

Plaintiff
v.
Lyft, Inc.,
Defendant

On behalf of Nevada’s Department of Employment Training and Rehabilitation (“DETR”), Plaintiff Christina Chagolla (“Relator”) commenced this *qui tam* action against Defendant Lyft, Inc. (“Lyft”) in the Second Judicial District Court of Nevada pursuant to the Nevada False Claims Act (“NFCA”). (ECF No. 1-1.) After the Nevada Attorney General did not intervene in this action, Lyft removed it to federal court. (ECF No. 1.) Thereafter, the Court granted the parties’ stipulation for Relator to file a first amended complaint (“FAC”). (ECF No. 18.) Before the Court is Defendant Lyft’s motion to dismiss (ECF No. 22) Relator’s FAC (ECF No. 19). Realtor responded (ECF No. 28), and Lyft replied (ECF No. 31). For the reasons described herein, the Court denies Defendant’s motion to dismiss.

I. Background

The complaint describes Lyft as “a transportation company...that contracts with drivers in the state of Nevada to provide personal transportation services to persons in the state of Nevada.” (ECF No. 19 at 2.) Lyft considers these drivers to be independent contractors. (*Id.*) Relator formerly acted as a driver for Lyft from approximately July 2019 through September 2022. (*Id.* at 2-3.) Relator’s FAC is

1 a *qui tam* action against Lyft comprised of a single count under the NFCA. (*Id.* at
 2 8.)

3 The basis of Relator's NFCA claim is that Lyft knowingly misclassifies its
 4 drivers as independent contractors for the purposes of Nevada unemployment tax
 5 and has thus unlawfully avoided paying unemployment taxes to the State of
 6 Nevada. Relator argues that Lyft's drivers do not fall under the independent
 7 contractor exemption from Nevada's unemployment compensation tax, NRS
 8 612.085. (*Id.* at 6-7.) Additionally, Relator argues that Lyft failed to affirmatively
 9 apply to the DETR for an independent contractor exemption from Nevada's
 10 unemployment compensation tax. (*Id.* at 8.) Thus, Relator alleges that drivers for
 11 Lyft must be considered employees pursuant to NRS 612.085. (*Id.* at 6). According
 12 to Relator, Lyft, therefore, "defrauded the state of Nevada by failing to pay monies
 13 to the state of Nevada's unemployment compensation system." (ECF No. 28 at 2.)

14 Lyft now moves the Court to dismiss Relator's FAC pursuant to Federal
 15 Rule of Civil Procedure 12(b)(6), arguing that Relator failed to state a NFCA claim
 16 upon which relief can be granted. (ECF No. 22.)

17 **II. Defendant's Motion to Dismiss**

18 **A. Legal Standard**

19 A party may seek the dismissal of a complaint under Rule 12(b)(6) for
 20 failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).
 21 When evaluating the sufficiency of a complaint challenged by a motion to dismiss
 22 under Rule 12(b)(6), the court must first accept as true all well-pled factual
 23 allegations in the complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009).
 24 However, "bare assertions" in a complaint amounting "to nothing more than a
 25 'formulaic recitation of the elements'" of a claim are not entitled to an assumption
 26 of truth. *Id.* at 680-81 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555
 27 (2007)). The court discounts these allegations because "they do nothing more
 28 than state a legal conclusion—even if that conclusion is cast in the form of a

1 factual allegation.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009).

2 After accepting all-well pled factual allegations as true, the court must then
 3 consider whether the complaint contains sufficient factual matter “to ‘state a
 4 claim to relief that is plausible on its face.’” *Ashcroft*, 556 U.S. at 678 (quoting
 5 *Twombly*, 550 U.S. at 570). A claim has facial plausibility when the pleaded
 6 factual content allows the court to draw the reasonable inference, based on the
 7 court’s judicial experience and common sense, that the defendant is liable for the
 8 alleged misconduct. *See id.* at 678–79 (“The plausibility standard is not akin to a
 9 probability requirement, but it asks for more than a sheer possibility that a
 10 defendant has acted unlawfully. Where a complaint pleads facts that are merely
 11 consistent with a defendant’s liability, it stops short of the line between possibility
 12 and plausibility of entitlement to relief.” (internal quotation marks and citations
 13 omitted)). “In sum, for a complaint to survive a motion to dismiss, the non-
 14 conclusory ‘factual content,’ and reasonable inferences from that content, must
 15 be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss*, 572 F.3d
 16 at 969.

17 Additionally, a claim under the NFCA must meet the heightened pleading
 18 standard of Federal Rule of Civil Procedure 9(b). *Nevada ex rel. Hager v.*
 19 *Countrywide Home Loans Servicing, LP*, 812 F. Supp. 2d 1211, 1218 (D. Nev.
 20 2011). Rule 9(b) requires the party alleging fraud to “state with particularity the
 21 circumstances constituting fraud.” Fed. R. Civ. P. 9(b). To satisfy Rule 9(b), “a
 22 pleading must identify the who, what, when, where, and how of the misconduct
 23 charged,” as well as “what is false or misleading about [the purportedly
 24 fraudulent] statement, and why it is false.” *Cafasso U.S. ex rel. v. Gen. Dynamics*
 25 *C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011) (internal quotation marks and
 26 citations omitted). But “malice, intent, knowledge, and other conditions of a
 27 person’s mind may be alleged generally.” Fed. R. Civ. P. 9(b).

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1 **B. Analysis**

2 The NFCA provides for *qui tam* actions for so called “reverse false claims”
 3 under NRS 357.040(1)(g). Under the NFCA, a reverse false claim occurs when a
 4 person “knowingly conceals or knowingly and improperly avoids or decreases an
 5 obligation to pay or transmit money or property to the State or a political
 6 subdivision.” NRS 357.040(1)(g). An “obligation” is “any established duty,
 7 regardless of whether the duty is a fixed duty, arising from...a statute or
 8 regulation.” NRS 357.024(5). A person acts “knowingly” if they (1) have knowledge
 9 of the information (2) act in deliberate ignorance of whether the information is
 10 true or false, or (3) act in reckless disregard of the truth or falsity of the
 11 information. NRS 357.040(3)(a)-(c).

12 Defendant’s motion to dismiss contains four bases for dismissal of Realtor’s
 13 complaint: (1) Relator’s claim is barred by the Nevada Supreme Court’s holding
 14 in *Int’l Game Tech., Inc. v. Second Jud. Dist. Ct. of Nevada*, 127 P.3d 1088 (Nev.
 15 2006) (hereinafter “IGT”), (2) NRS 612.085 does not require businesses to seek a
 16 prior exemption before engaging independent contractors, (3) the Court lacks
 17 jurisdiction over Relator’s claim under the NFCA’s public disclosure bar, and (4)
 18 Relator’s claim does not meet the pleading requirements of Rule 9(b) because the
 19 complaint fails to allege a false statement. These arguments are addressed in
 20 turn.

21 **1. Application of *Int’l Game Tech., Inc. v. Second Jud. Dist. Ct. of***
 22 ***Nevada, 127 P.3d 1088 (Nev. 2006)***

23 Defendant first argues that the holding in *IGT* applies to the case at hand.
 24 Defendant cites *IGT* for the proposition that “determinations of fact-based legal
 25 issues under the tax statutes should not be made by the courts.” *IGT*, 127 P.3d
 26 at 1105-1106. Defendant asserts that the questions of (1) whether a business
 27 must affirmatively seek an exemption under NRS 612.085 and (2) whether Lyft
 28 drivers are independent contractors or employees under NRS 612.085 is a

1 determination that cannot be made by the courts, and must be made by the
 2 DETR.

3 The circumstances in *IGT* are quite different from the present action. In
 4 *IGT*, a private plaintiff brought a *qui tam* action under the NFCA. After the
 5 Attorney General intervened, he sought dismissal of the case, arguing that the
 6 court should defer to the tax department, which had been working towards but
 7 had not yet made a determination on the very issue presented in the case. *Id.* at
 8 1094-95. The Nevada Supreme Court applied a “good cause” test for dismissal of
 9 a private action by an intervening Attorney General, finding that the Attorney
 10 General’s arguments presented good cause. *Id.* at 1099, 11-6-1107. In doing so,
 11 however, the court also held that tax liability matters are not excluded from the
 12 scope of the NFCA. *Id.* at 1104-1105; *See also Orbitz Worldwide, LLC v. Eighth*
 13 *Jud. Dist. Ct. in & for Cnty. of Clark*, 139 Nev. Adv. Op. 40, 535 P.3d 1173 (2023)
 14 (permitting claim under NFCA alleging knowing avoidance of transient lodging
 15 taxes).

16 None of that context exists in the present action. The Attorney General
 17 declined to intervene in the present action and has not sought dismissal of
 18 Relator’s claim. The Court is not undertaking a “good cause” analysis for
 19 dismissal. Nor is there any evidence in the pleadings that the DETR is working
 20 towards a determination of either question before this Court. Thus, it does not
 21 appear that the holding in *IGT* forecloses Relator’s NFCA claim.

22 **2. Requirement to Obtain Prior Exemption under NRS 612.085**

23 Defendant next asserts that as a matter of law, there is no affirmative duty
 24 under NRS 612.085 to seek an independent contractor exemption before
 25 engaging independent contractors, meaning that Lyft had no “obligation” under
 26 NRS 357.040(1)(g). (ECF No. 22 at 13-15.) Regardless of whether there is an
 27 affirmative duty to seek an exemption under NRS 612.085, it appears that Relator
 28 states a claim under the NFCA. Relator alleges that Lyft’s drivers do not meet the

1 requirements for an independent contractor exemption under NRS 612.085. (ECF
 2 No. 19 at 6-8.) If accepted as true, as the Court must do at this stage, Lyft would
 3 have an obligation to pay unemployment taxes. Relator further alleges that
 4 Defendant avoided this obligation knowingly. (*Id.* at 8.) Knowingly is broadly
 5 defined under NRS 357.040(3)(a)-(c) to include acts done with actual knowledge,
 6 deliberate ignorance, or reckless disregard for the truth. Whether or not Lyft
 7 drivers are employees under NRS 612.085, giving rise to Lyft's obligation to pay
 8 unemployment taxes, and whether Lyft failed to do so knowingly are factual
 9 issues that cannot be resolved at the motion to dismiss stage.

10 **3. NFCA Public Disclosure Bar**

11 Under NRS 357.100, "a court shall dismiss an action or a claim made
 12 pursuant to this chapter that is substantially based on the same allegations or
 13 transactions that have been disclosed publicly" in certain circumstances. NRS
 14 357.100. Defendant focuses on disclosure under NRS 357.100(3) by the news
 15 media.

16 Public disclosure under the NFCA requires a "two-tiered inquiry," which
 17 requires a court to (1) determine whether the elements of public disclosure have
 18 been met, and if so, (2) determine whether the relator is the original source of the
 19 information. *United States v. My Left Foot Children's Therapy, LLC*, No. 2:14-CV-
 20 01786-MMD-GWF, 2017 WL 1902159, at *6 (D. Nev. May 9, 2017) (citing *A-1*
 21 *Ambulance Service, Inc. v. California*, 202 F.3d 1238, 1243 (9th Cir. 2000)
 22 (discussing public disclosure analysis under the federal False Claims Act, 31
 23 U.S.C §§ 3729-3733)).

24 To satisfy the first tier of the analysis, a court must establish that the
 25 relator's allegations are substantially based on the same allegations or
 26 transactions that have been disclosed publicly. NRS 357.100; *My Left Foot*
 27 *Children's Therapy*, 2017 WL 1902159, at *6.

28 Defendant argues that information regarding Lyft drivers' independent

1 contractor status is widely known, and that many news articles have in fact
 2 discussed the implications of this classification as to unemployment benefits.
 3 (ECF No. 22 at 17-18.) Relator counters that public disclosure of the fact that
 4 Lyft treats its drivers as independent contractors is not the same as public
 5 disclosure of the allegation that Lyft is unlawfully avoiding its obligation to pay
 6 unemployment taxes in violation of Nevada law. (ECF No. 28 at 12-13.)

7 While many of the news articles¹ that Defendant cites discuss the matter
 8 of unemployment benefits for Lyft drivers and rideshare drivers generally, none
 9 state that Lyft is an employer under Nevada law, not entitled to an exemption for
 10 those who hire independent contractors, must pay unemployment taxes to the
 11 state of Nevada, or that Lyft has violated the NFCA.

12 Because the Court finds that Defendant has not shown public disclosure,
 13 the Court need not address the issue of whether Relator is an “original source.”

14 **4. Rule 9(b)**

15 Finally, Defendant argues that Relator has failed to plead her NFCA claim
 16 with the level of specificity required by Fed. R. Civ. P. 9(b). Specifically, Defendant
 17 argues that a reverse false claim under the NFCA requires that a defendant make
 18 a false statement, which Relator fails to allege. (ECF No. 22 at 20-21.) However,
 19 the case law Defendant cites for this proposition interprets either the federal False
 20 Claims Act (“FCA”) or the NFCA before they were both subsequently amended.
 21 (See *id.*)

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 23 ¹ The Court takes judicial notice of the existence of the news articles cited in
 24 Defendant’s motion to dismiss for the purposes of determining public disclosure.
 25 See *U.S. ex rel. Dingle v. BioPort Corp.*, 270 F. Supp. 2d 968, 977 n. 2 (W.D. Mich.
 26 2003), *aff’d sub nom. Dingle v. Bioport Corp.*, 388 F.3d 209 (6th Cir. 2004) (taking
 27 judicial notice of journal article for purposes of public disclosure). Relator does
 28 not oppose consideration of these articles and we consider the fact of their
 existence information “not subject to reasonable dispute.” Fed. R. Evid. 201(b).
 See *In re Silver Lake Grp., LLC Sec. Litig.*, 108 F.4th 1178, 1185 n.3 (9th Cir.
 2024). The Court does not take judicial notice of the truth of any facts stated in
 these articles.

1 In *Cafasso*, the Ninth Circuit interpreted then section 3729(a)(7) of the
 2 FCA, which defined a false claim as when a person “knowingly makes, uses, or
 3 causes to be made or used, *a false record or statement* to conceal, avoid, or
 4 decrease an obligation to pay or transmit money or property to the Government.”
 5 31 U.S.C. § 3729(a)(7) (2006), *amended by* 31 U.S.C. § 3729(a)(1)(G) (123 Stat.
 6 1621 2009) (emphasis added); *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047 (9th Cir. 2011). The FCA has since been amended. 31 U.S.C.
 7 § 3729(a)(1)(G) now makes it unlawful to “knowingly conceal[] or knowingly and
 8 improperly avoid[] or decrease[] an obligation to pay or transmit money or
 9 property to the Government.” 31 U.S.C. § 3729(a)(1)(G). This new language does
 10 not require a false statement. *U.S. ex rel. Petras v. Simparel, Inc.*, No. 13-24150
 11 (FLW), 2015 WL 337472, at *5 (D.N.J. Jan. 26, 2015); *U.S. ex rel. Yannacopoulos v. Gen. Dynamics*, 652 F.3d 818, 835 n. 16 (7th Cir. 2011).

14 In *Bates*, the District of Nevada interpreted the NFCA prior to amendment
 15 in 2013. Prior to the 2013 amendments, a reverse false claim occurred when a
 16 person “[k]nowingly makes or uses, or causes to be made or used, *a false record or statement* to conceal, avoid or decrease an obligation to pay or transmit money
 17 or property to the state or a political subdivision.” NRS 357.040(1)(g) (2007)
 18 (amended 2013) (emphasis added); *Bates v. Mortg. Elec. Registration Sys.*, No.
 19 3:10-CV-00407-RCJ, 2011 WL 1304486, at *3 (D. Nev. Mar. 30, 2011), *aff'd sub
 20 nom. Nevada ex rel. Bates v. Mortg. Elec. Registration Sys., Inc.*, 493 F. App'x 872
 21 (9th Cir. 2012).

23 The 2013 amendments to the NFCA include nearly identical language to
 24 the 2009 amendments to the federal FCA. The NFCA now provides that a reverse
 25 false claim arises when a person “[k]nowingly conceals or knowingly and
 26 improperly avoids or decreases an obligation to pay or transmit money or property
 27 to the State or a political subdivision.” NRS 357.040(1)(g). Like the federal FCA,
 28 this plain language does not require a false statement to plead a reverse false

1 claim under NRS 357.040(1)(g). *See U.S. ex rel. Petras v. Simparel, Inc.*, 2015 WL
2 337472, at *5. Thus, Relator was not required to plead a false statement for her
3 claim under NRS 357.040(1)(g) in order to meet the requirements of Rule 9(b).

4 Additionally, Defendant argues that Relator fails to allege the requisite
5 scienter to defraud. However, knowledge may be alleged generally under Fed. R.
6 Civ. P. 9(b). Thus, Relator's allegation that Lyft knowingly avoided its obligation
7 as an employer to pay unemployment taxes to the State of Nevada as required
8 under NRS Chapter 612 properly states a claim under NRS 357.040(1)(g).

9 **III. Conclusion**

10 It is ordered that Defendant's motion to dismiss Relator's first amended
11 complaint (ECF No. 22) is DENIED.

12 It is also ordered that Defendant's motion to dismiss (ECF No. 14) is
13 DENIED as moot.

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15 Dated this 30th day of September, 2024.

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17
18 ANNE R. TRAUM
19 UNITED STATES DISTRICT JUDGE
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